

(who was appointed trustee for that purpose,) and ratified by the court; and certain questions having arisen relative to the legacies bequeathed by the testator, the nature of which will appear from the Chancellor's opinion, the case was submitted to him upon written arguments. And at this term, he delivered his opinion as follows:]

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**THE CHANCELLOR:**

Wood, the executor, in his answer to the bill filed by Thomas, suggests a doubt, whether the latter is entitled, as surviving husband, to the two thousand dollars, which his deceased wife, Isabella Thomas, was to have received out of the proceeds of the real estate which was to have been sold by the executor, she having died before the sale was made; and supposed that the same may now belong to her brother and sister, she (the wife) having died without issue. And this is the first question to be considered. The brother and sister in their answers do not set up any claim to this money, but my opinion in regard to it is not placed upon this ground.

The testator has directed that his land should be sold by his executor, and out of the proceeds thereof, Isabella, the wife of Thomas, should be paid the sum of two thousand dollars. This provision in the will converted the land, in the view of a court of equity, into money, and the surviving husband has the same title to demand the legacy bequeathed his wife as if it had been payable out of the personal estate of the testator.

The Court of Appeals in the case of *Hurt v. Fisher*, 1 Har. & Gill, 88, recognise in the most explicit terms the rule, that lands devised to be sold are turned into money, and considered in equity as personal estate. In that case to be sure, in which the surviving husband (as here) was seeking to recover a legacy which his wife was entitled to, out of the proceeds of the real estate directed to be sold—the wife survived until after the sale was made; which the court said removed all doubt of his right to recover; but it appears to me very obvious from the manner in which the rule of law is asserted, that the result would have been the same if the wife had died prior to the sale. In the